

203

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.

In the matter of:)	
)	
GARY PUGET d/b/a AUTOMOTIVE SERVICES AND TECHNOLOGY)	File No. MSEB/AED - 4905
)	
Respondent.)	SETTLEMENT AGREEMENT
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Gary Puget d/b/a Automotive Services and Technology located at 1208 Smithfield Avenue, Lincoln, Rhode Island 02865 (Respondent).

Preliminary Statement

1. On July 27, 1999, a Notice of Violation (NOV) was issued to Respondent alleging that Respondent had violated § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 CFR Part 80. The NOV stated that on June 1, 1998, reformulated gasoline (RFG) was manufactured and sold or distributed, offered for sale or distribution, dispensed, supplied, offered for supply, stored, transported or caused to be transported that did not meet the requirements of RFG in that it failed to meet the VOC emissions reduction standard for Rhode Island, a covered RFG area. The premium unleaded gasoline had a VOC emissions performance reduction of -4.04% (which is an increase of 4.04%) on June 1, 1998 and 8.42% on June 30, 1998, which violates the applicable minimum standard of 13.1% for VOC Region 2. Respondent was liable for this violation as the

retailer who owns, leases, operates, controls or supervises the facility where the violation was found. The NOV further stated that the statutory civil penalty is Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per day for each such violation plus the amount of economic benefit or savings resulting from the violation pursuant to § 211(d) of the Act, 42 U.S.C. § 7545(d). The proposed civil penalty for the violation alleged in the NOV was One Thousand Eight Hundred Dollars (\$1,800).

2. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

3. The parties agree that the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter.

4. The parties stipulate and agree to the following facts. It is further agreed that these stipulations are applicable to this Agreement and any proceeding arising out of this Agreement or the subject matter of this Agreement.

a. At all relevant times Respondent was the retailer of the Automotive Services and Technology retail outlet located at 1208 Smithfield Ave., Lincoln, Rhode Island, within the meaning of 40 CFR § 80.2 (k).

b. On June 1, 1998, an RFG survey inspection was conducted at the Automotive Services and Technology branded gasoline retail

outlet located at 1208 Smithfield Ave., Lincoln, Rhode Island. This inspection determined that premium gasoline having a VOC emissions performance reduction less than the minimum standard was being sold or offered for sale at the time of the inspection. The premium gasoline's VOC emissions performance reduction was -4.04% (which is an actual increase of 4.04%) less than the allowable minimum of 13.1% for VOC Region 2. This constitutes a violation of 40 C.F.R. § 80.78(a)(1).

c. On June 30, 1998, an RFG inspection was conducted at the Automotive Services and Technology branded gasoline retail outlet located at 1208 Smithfield Ave., Lincoln, Rhode Island. This inspection determined that premium gasoline having a VOC emissions performance reduction less than the minimum standard was being sold or offered for sale at the time of the inspection. The premium gasoline's VOC emissions performance reduction was 8.42% less than the allowable minimum of 13.1% for VOC Region 2. This constitutes a violation of 40 C.F.R. § 80.78(a)(1).

d. EPA further determined that Respondent was liable for the violation pursuant to 40 CFR § 80.28, as the retailer.

e. Respondent has agreed to use inventory control during the month of April each year to prevent future violations.

f. Jurisdiction to settle this matter exists pursuant to section 211 of the Act, 42 U.S.C. § 7545, 40 CFR Part 80, and other provisions of law.

5. After considering the gravity of the alleged violation, Respondent's history of compliance, the terms of this Agreement, and other facts presented by Respondent, EPA has determined to conditionally remit and mitigate the civil penalty to One Thousand One Hundred Three Dollars (\$1,103). Respondent agrees to pay Three Hundred Dollars (\$300) within thirty days of receipt of a signed settlement agreement from EPA. Respondent agrees to pay Three Hundred Dollars (\$300) within sixty days of receipt of a signed settlement agreement from EPA. Respondent agrees to pay Three Hundred Dollars (\$300) within ninety days of receipt of a signed settlement agreement from EPA. Respondent agrees to pay Two Hundred Three Dollars (\$203) within one hundred twenty days of receipt of a signed settlement agreement from EPA. In the event Respondent does not receive a copy of this Agreement within thirty (30) days following its execution by EPA, the due date shall be thirty (30) days following the date of Respondent's receipt of an executed copy. Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay this amount by cashier's check or certified check with the notation "AED/MSEB - 4905" payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 4905

A copy of this check shall be forwarded to Judith E. Graham, at the following address:

Judith E. Graham, Attorney/Advisor
U.S. Environmental Protection Agency
Western Field Office
12345 W. Alameda Parkway, Suite 214
Denver, CO 80228

6. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraph 5 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by Respondent, the parties agree that upon such default of failure to comply, EPA may commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 205 of the Clean Air Act; or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of § 203 of the Act, 42 U.S.C. § 7522, and Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of the passage of time.

7. This Agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned to Respondent.

8. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution intended and is sufficient to bind Respondent, its officers, agents, directors, owners, heirs, assigns, and successors.

9. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law

relating to matters consented to herein. Notwithstanding its agreement to settle or resolve this matter, Respondent neither admits or denies the findings of fact or conclusions or law contained herein.

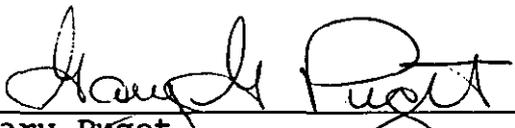
10. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

11. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

12. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of § 203 of the Clean Air Act, 42 U.S.C. § 7522, which are not the subject matter of this Agreement; or for other violations of law.

The following agree to the terms of this Agreement:

GARY PUGET d/b/a AUTOMOTIVE SERVICES AND TECHNOLOGY

by: 
Gary Puget
d/b/a Automotive Services and Technology

Date: 9/30/99

**United States
Environmental Protection Agency**

by: Richard Biondi / L

Date: 10-27-99

Bruce C. Buckheit
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance